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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Higher Penalties Could Deter Violations Of Nuclear Regulations

This report discusses the Nuclear Regulatory Commission's use of civil penalties to enforce its regulations governing the construction and operation of commercial nuclear facilities and the possession, use, and disposal of nuclear materials.

The Commission has requested that the amount it can impose as a penalty be increased to \$100,000 from the present \$5,000 for each violation and to \$300,000 for all violations in a 30-day period from the present \$25,000.

GAO concurs but does not agree that the maximum penalty for all violations in a 30-day period should be restricted to \$300,000.

The report recommends ways the Commission can strengthen its civil penalty authority.



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives *CWD 00001*

This report discusses the Nuclear Regulatory Commission's use of civil penalties in enforcing its regulations governing the construction and operation of commercial nuclear facilities and the possession, use, and disposal of nuclear materials.

We made this review as a part of our evaluation of the effectiveness of the Commission's licensing and related regulatory activities, as required by the Energy Reorganization Act of 1974 (42 U.S.C. 5876).

We are sending copies of this report to the Director, Office of Management and Budget, and the Chairman, Nuclear Regulatory Commission.

A handwritten signature in dark ink, which appears to read "Thomas B. Steads", is written over the printed name.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

HIGHER PENALTIES COULD
DETER VIOLATIONS OF NUCLEAR
REGULATIONS

D I G E S T

Civil penalties the Nuclear Regulatory Commission can impose are too low to discourage violations of its regulations by large nuclear operators.

The Commission has recognized this and recently requested the Congress to authorize ^{raising} penalties of up to \$100,000 for each violation and \$300,000 for all violations occurring in a period of 30 consecutive days. Present law allows the Commission to impose civil penalties of only \$5,000 for each violation and \$25,000 for all violations occurring in a period of 30 consecutive days.

These limits are too low to be effective against large nuclear operations which provide services not readily available elsewhere. For example, a utility operating a nuclear powerplant today spends about \$1 billion to construct it, millions annually to operate it, and on the order of \$300,000 a day to purchase power from other sources when it is shut down. Thus, a \$25,000 or less civil penalty is of little economic consequence to a utility.

^y The ~~se~~ limits are also low compared to amounts authorized for other Federal regulatory agencies, considering the potential consequences of major violations.

^{GAO} GAO supports the Commission's request for higher penalties but believes that setting a limit of ~~\$300,000~~ for violations in a 30-day period unnecessarily weakens the Commission's hand in compelling corrective actions to improve the safety of nuclear operations. Hopefully, the mere threat of the larger penalties would improve compliance.

EMD-79-9

The Commission regulates the construction and operation of nuclear powerplants and nuclear fuel facilities and the possession, use, and disposal of nuclear materials to insure safe operation of facilities and use of materials. There are 70 operating nuclear powerplants, 143 planned or under construction, and about 8,000 persons and companies using nuclear materials in industry, medicine, and research.

~~F/C~~ The Commission sets standards and regulations, issues licenses, and inspects licensed activities. When it detects violations, it takes one or more of three available enforcement actions:

- a letter notifying the licensee of the violation;

- a civil monetary penalty; or

- an order directing the licensee to cease and desist an unsafe practice or suspending, modifying, or revoking a license.

The Commission also requests the licensee to report actions taken or planned to correct the violations and confirms that the actions were taken on subsequent inspections.

In 1977 the Commission found violations in 40 percent of its 6,512 inspections. The majority of enforcement actions were notification letters to licensees, 13 were civil penalties, and 5 were orders. GAO focused its evaluation of the Commission's enforcement program on civil penalties because they are intended for use when licensee violations are important but do not represent an immediate threat to public health and safety. The Commission had issued 12 civil penalties in 1978 as of the end of November.

THE COMMISSION HAS NOT
EFFECTIVELY USED ITS
EXISTING CIVIL PENALTY
AUTHORITY

2. The Commission has had some difficulty with recurring infractions of its nuclear safety

requirements by certain licensees. GAO believes ~~that~~ this situation results in part from certain Commission practices in applying civil penalties in a manner that fails to achieve swift, sure, consistent and fair treatment of violations. *insert* The following practices have diminished the effectiveness of the Commission's present civil penalty authority.

- Consolidating separate violations of the same requirement into one violation, thereby lowering the civil penalty amount and understating the number of inspection violations. (See pp. 10 to 11.)
- Not always aggressively selecting and imposing civil penalty sanctions consistent with its desired image of a tough but fair regulator. (See pp. 11 to 17.)
- Not always promptly clarifying regulations in dispute. (See pp. 14 to 17.)
- Taking too much time to impose civil penalties. (See pp. 17 to 18.)
- Not notifying State utility regulatory commissions of civil penalties imposed on utilities for consideration in the ratemaking process. (See pp. 18 to 19.)

GAO believes, however, that even if the Commission fully and effectively used its present authority, it still would need authority to impose larger civil penalties on those licensees with large and potentially hazardous programs.

THE COMMISSION SHOULD SET
OUT ITS ENFORCEMENT PROGRAM
BY RULEMAKING

- ³ Authority to impose larger civil penalties on the order the Commission has requested would represent a major change in its enforcement program. This major change, plus the need to revise its present enforcement policies and procedures, ~~led GAO to conclude~~ *means* ~~clude~~ that the Commission should incorporate

the details of its enforcement program in its regulations./ At present, the regulations merely provide a general description of the enforcement process, while the details are contained in the Commission's enforcement manual which is not subject to the rulemaking process./ Thus, the manual was developed without benefit of the views of affected external parties. Rulemaking, on the other hand, provides for obtaining participation by interested persons in developing a regulation.

Rulemaking would provide a forum for the Commission to articulate its enforcement program to licensees and the public, and to obtain licensees' and the public's view on the enforcement program. In addition, rulemaking would promote more consistent selection of enforcement sanctions appropriate for licensee violations and their significance to public safety. It would also provide Commission management, licensees, and the public a measure of the Commission staff's performance. Finally, it would promote licensees' understanding of, and the public's confidence in, the Commission's enforcement activities.

RECOMMENDATION TO THE CONGRESS

The Congress should increase the civil penalty amount the Commission can impose from \$5,000 to \$100,000 for a single violation, and eliminate the limitation on the amount that can be imposed for all violations in a period of 30 consecutive days. Specific language for the recommended amending legislation is on page 23 of this report.

RECOMMENDATION TO THE CHAIRMAN, NUCLEAR REGULATORY COMMISSION

The Chairman, Nuclear Regulatory Commission, should

--revise the Commission's policies and procedures to promote more effective

use of its enforcement authority (see p. 24), and

--establish Commission enforcement criteria, policies, and procedures by rulemaking.

AGENCY COMMENTS

The Commission agreed that it needs to process civil penalty cases and clarify ambiguous regulations faster. It also said it is (1) developing better guidance on proper handling of separate violations of the same regulations and (2) reviewing the subject of notifying utility commissions when the Commission imposes civil penalties on utilities. The Commission did not agree, however, that the matters discussed in this report demonstrate that the Commission has not effectively used its civil penalty authority. (See pp. 24 to 25.)

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ABBREVIATIONS

AEC	Atomic Energy Commission
GAO	General Accounting Office
NRC	Nuclear Regulatory Commission

CHAPTER 1

INTRODUCTION

As of August 31, 1978, there were 70 electric-utility-owned nuclear powerplants operating in this country and another 143 planned or under construction. In addition, there are 73 research and test reactors and about 8,000 persons and companies using nuclear materials in industry, medicine, and academic research. The Nuclear Regulatory Commission (NRC) is responsible for insuring that these nuclear facilities are operated and nuclear materials are used safely.

NRC regulates by setting standards and regulations, issuing licenses specifying the activities licensees may engage in, and finally, inspecting licensees' compliance with these regulatory requirements. NRC's Office of Inspection and Enforcement makes these inspections and, when it detects violations, takes enforcement action. Most inspections, investigations, and enforcement actions are handled in five Office of Inspection and Enforcement regional offices at or near Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Dallas, Texas; and San Francisco, California.

In 1977 NRC made 6,512 inspections and investigations. These included 3,014 health-and-safety-related inspections and investigations at nuclear powerplants and research and test reactors; 3,067 inspections and investigations of radioactive material licensees (including nuclear fuel cycle facilities); and 431 safeguards-related inspections and investigations at nuclear powerplants and nuclear fuel cycle facilities. NRC found one or more violations of regulatory requirements in 2,579--40 percent--of the 6,512 inspections and investigations.

NRC'S INSPECTION AND ENFORCEMENT PROGRAM

NRC's basic inspection and enforcement policy is that licensees are primarily responsible for protecting the health and safety of the public and their employees and for complying with regulatory requirements. Thus, in addition to inspecting for violations of regulatory requirements, NRC checks to see if licensees have management control systems that will continually identify and correct unsafe conditions and regulatory violations. NRC conducts inspections both on a routine or scheduled basis and on a reactive basis as a result of incidents or allegations.

NRC takes enforcement actions with two objectives in mind: in the short term, to insure that licensees correct inspection violations; in the long term, to provide incentives for all licensees to conduct their licensed activities safely by consistently applying enforcement sanctions. There are three types of formal or legally binding enforcement sanctions available for NRC's use. NRC has published criteria, policies, and procedures it uses to select sanctions appropriate for inspection violations.

1. Notice of violation--A letter notifying a licensee that it has apparently violated one or more regulatory requirements, and requesting the licensee to report to NRC the action(s) taken or planned to correct the violation(s).
2. Civil penalty--A monetary fine imposed on a licensee for violations NRC considers important to safety, but not an immediate threat to public health and safety. Before imposing a civil penalty, NRC must notify the licensee of the apparent violation(s) and give the licensee 20 days to challenge the proposed penalty. Once imposed, a licensee may request a hearing on the penalty.
3. Order--A directive to a licensee to cease and desist an unsafe practice; or to suspend, modify, or revoke a license based on conditions NRC considers an immediate threat to public health and safety.

According to NRC officials, their inspection and enforcement policies and procedures are intended to project a "tough but fair" regulatory image--unhesitant to apply strong enforcement sanctions, but willing to admit error.

LIMITS ON THE SCOPE OF OUR REVIEW

The large majority of NRC enforcement actions are routine letters notifying licensees of apparent violations and requesting them to inform NRC in writing of corrective actions and schedules for completing these actions. In 1977, 2,561 --99 percent--of the inspections for which violations were found resulted in notice of violation letters. NRC evaluates licensees' proposed corrective actions, and confirms their implementation in subsequent inspections. At the other end of the enforcement spectrum, NRC occasionally uses enforcement orders when it considers violations serious enough to require immediate action to protect public health and safety. NRC issued five enforcement orders in 1977. The middle enforcement level--civil penalties--is a major escalation in NRC's enforcement sanctions intended for use when (1) licensee

violations are important but do not represent an immediate threat to public health and safety or (2) an order would be counterproductive because it would deprive a licensee and its employees of their livelihood and the public of an important service. NRC used this sanction on 13 occasions in 1977 and on 12 occasions in 1978 as of the end of November. We focused our review on evaluating the appropriateness of NRC's civil penalty authority for the licensees it regulates, and on NRC's effectiveness in using this authority, because this enforcement sanction was intended to be used as an alternative to orders in cases not involving immediate threats to public health and safety.

We reviewed 18 of the 68 civil penalty enforcement sanctions imposed on NRC licensees from 1971 through December 1977. Nine of these penalties were imposed on utilities operating nuclear powerplants, one on the operator of a research reactor, and eight on nuclear material licensees. We also reviewed four of the nine cases in this period for which NRC downgraded proposed civil penalties to letters notifying utilities constructing or operating nuclear powerplants of the inspection violations. We selected the 22 enforcement cases based on our (1) discussions of enforcement practices with NRC personnel and (2) examination of summary information comparing the enforcement actions taken to actions originally proposed by regional offices. During the review, we examined documents, studies, reports, correspondence, and other records; and we interviewed NRC personnel at NRC headquarters and three regional offices. We also interviewed officials of four State utility commissions and the Federal Energy Regulatory Commission, Washington, D.C.

Because our focus was on evaluating NRC's enforcement practices, rather than evaluating the performance of specific licensees, licensees discussed in this report are not identified.

CHAPTER 2

NRC NEEDS AUTHORITY TO IMPOSE

LARGER CIVIL PENALTIES

The Atomic Energy Act of 1954, as amended permits NRC to impose civil penalties of up to \$5,000 for each violation and \$25,000 for all violations occurring in a period of 30 consecutive days (42 U.S.C. 2282). In our view these limits are too low to permit NRC to take effective enforcement action --short of suspending licenses--against licensees with large and potentially hazardous nuclear operations which provide services not readily available elsewhere. This is because the small civil penalties NRC can impose may not provide economic incentive for these licensees to improve the safety of their operations. NRC also has recognized this and recently requested the Congress to authorize penalties of up to \$100,000 for each violation and \$300,000 for all violations occurring in a period of 30 consecutive days.

BACKGROUND ON NRC'S CIVIL PENALTY AUTHORITY

In 1969 NRC's predecessor, the Atomic Energy Commission (AEC), sought civil penalty authority as an intermediate enforcement sanction between letter notices of violations and orders either directing licensees to cease and desist certain activities or suspending, modifying, or revoking licenses. AEC recognized that licensee violations were sometimes severe enough to warrant enforcement actions stronger than letters; however, its next available alternative was to issue orders --an enforcement sanction AEC wished to reserve for violations comprising an immediate and significant threat to public health and safety. AEC also recognized that an order to suspend licensed activities--when not required to stop an immediate threat to public health and safety--could be counterproductive by (1) imposing greater financial burden on licensee employees than on the licensee and (2) depriving the licensee's customers of valuable services. Of particular concern to AEC was the possibility of having to suspend a utility's nuclear powerplant operating license--thus depriving the utility's customers of electric power from the plant.

AEC proposed legislation which would have authorized civil penalties of \$5,000 for each violation, except that the maximum penalty in any 30-day period for a single, continuing violation would be limited to \$10,000. AEC did not propose an upper limit on the penalty it could impose for all violations detected during one inspection.

The Congress recognized AEC's need for civil penalty authority, but was concerned that AEC's proposal would make the penalty less for continuing violations than for a series of separate violations, although a continuing violation could be more significant to safety. The Congress was also concerned about the financial burden civil penalties might have on licensees with limited operations and financial resources.

The civil penalty authority the Congress granted AEC in 1969--which is NRC's present authority--recognized these concerns. It (1) limited the penalty for each violation to \$5,000, (2) limited the penalty for all violations in a 30-day period to \$25,000, and (3) required AEC to treat each day of a continuing violation as a new violation when computing civil penalty amounts.

Since 1971 AEC and NRC have imposed 80 civil penalties for inspection violations--30 by AEC from October 1971 through January 18, 1975, and 50 by NRC from January 19, 1975, through November 30, 1978. Two additional proposed civil penalties have been withdrawn. Thirty of these 82 penalties were proposed or imposed on utilities operating nuclear powerplants, 1 on a utility constructing a nuclear powerplant, 2 on a company operating a research reactor, and the remaining 49 on licensees that owned, possessed, or used radioactive material. Civil penalties imposed on utilities constructing or operating nuclear powerplants have ranged from \$3,500 for 1 violation to \$38,000 for 11 violations; and from \$1,000 for 10 violations to \$53,000 for 18 violations on radioactive material licensees.

The largest civil penalty--\$53,000--was imposed by NRC in 1976 against a nuclear fuel processor. In this case NRC computed a \$94,000 penalty for 18 violations detected in 2 inspections. The violations occurred during the 4-month period from November 23, 1976, to March 22, 1977. During two 30-consecutive-day periods, however--December 23, 1976, to January 21, 1977, and February 21, 1977, to March 22, 1977--the computed penalty amounts were \$62,000 and \$29,000, respectively. Therefore, because of the \$25,000 limitation for all violations in a 30-day period, NRC had to reduce the actual civil penalty amounts to \$25,000 each for these two periods plus \$3,000 for one violation that occurred on November 23, 1976. This resulted in a \$53,000 penalty.

NRC'S CIVIL PENALTY AUTHORITY IS LOW COMPARED TO THAT OF OTHER AGENCIES

NRC recently studied the inspection and enforcement programs of nine other Federal agencies with regulatory responsibility for protecting public health and safety.

NRC found that its civil penalty authority is low compared to several of these agencies when the potential consequences of a major accident at a nuclear powerplant are taken into account.

For example, the Environmental Protection Agency can impose penalties up to \$25,000 per day for violations of the Toxic Substance Control Act with no overall upper limit. In addition, Federal courts may impose civil penalties for any related series of violations of the National Traffic and Motor Vehicle Safety Act, Consumer Product Safety Act, and Radiation Control for Health and Safety Act in amounts up to \$800,000, \$500,000, and \$300,000, respectively.

NRC'S CIVIL PENALTY AUTHORITY
IS TOO LOW TO BE EFFECTIVE
AGAINST CERTAIN LICENSEES

There are three important factors in the effectiveness of NRC's civil penalty authority as an enforcement sanction:

- The size and scope of licensed operations, including the potential health, safety, and environmental hazards.
- The financial resources of licensees, and how these resources provide licensees with incentives to comply with regulatory requirements.
- Availability of alternative sources for the nuclear services licensees provide.

Measured against these factors, NRC believes that its present civil penalty authority is too low for effective use against licensees with comparatively large programs and financial resources which provide services not readily available from other sources. The civil penalties that NRC can impose on these licensees may be too small to provide economic incentives for them to improve their programs from a health, safety, and environmental standpoint. Also, except in the case of an immediate threat to public health and safety, NRC is precluded from using a stronger sanction such as suspending a license due to the counterproductive impact of depriving the public of an essential service. A comparison

between a utility operating a nuclear powerplant and a small industrial radiography 1/ firm illustrates these points.

A utility invests about \$1 billion to construct a nuclear powerplant, spends millions of dollars more each year to operate it, and NRC's staff has estimated that it costs about \$300,000 a day to replace the lost electricity from other sources when a plant is shut down. Furthermore, the utility's customers do not have other suppliers to turn to for electricity. These facts argue for a major NRC enforcement sanction--short of suspending the utility's license--which would urge a utility to correct violations and comply with NRC's regulatory requirements. NRC's present civil penalty authority, when compared to a utility's financial resources, its scope of operations, and its investment in a nuclear powerplant, does not provide such an incentive; and NRC has never suspended a utility's nuclear powerplant operating license because of violations detected in an inspection or investigation. NRC officials recognize that a small civil penalty does not provide a utility with economic incentive for compliance, but believe accompanying adverse publicity provides a utility some incentive to improve its operations. NRC announces each civil penalty by press release distributed to hundreds of publications, citizens, and organizations.

On the other hand, many of the 367 NRC-licensed industrial radiography firms are relatively small--some employing 10 or fewer persons. Thus, NRC civil penalties against these firms can have a major financial impact. However, because industrial radiography services are available from many licensees, an NRC-ordered license suspension would not deprive businesses from obtaining these services elsewhere. Recognizing this, NRC has suspended radiography licenses on two occasions.

The difference in size and scope of operations, including potential hazards, between a utility operating a nuclear powerplant and an industrial radiography firm illustrates another problem NRC is faced with in taking enforcement actions. This relates to equating the size of penalties with the significance of violations to safety. Many civil penalties NRC has imposed on utilities have involved incidents which had no actual health and safety consequences. That is, no one was exposed to radiation, nor was any radioactive

1/Radiography is the examination of the structure of materials by nondestructive methods, using sealed sources of radioactive materials.

material released into the environment. The civil penalties in these cases were based on the potential for major safety or environmental consequences.

On the other hand, NRC and AEC have imposed 20 civil penalties on industrial radiography firms for actual health-and-safety-related incidents. Considering these facts a question arises as to whether the radiography firm should be penalized more than the utility because an actual safety-related incident occurred; or does an incident at a nuclear powerplant warrant a larger penalty because the potential consequences of the incident are severe? NRC believes that violations at nuclear powerplants with the potential for large safety or environmental consequences and utilities' comparatively large financial resources argue persuasively for larger penalties for these violations.

NRC believes larger civil penalties would provide licensees economic incentives to improve the safety of their operations

NRC officials told us that most licensees, including most utilities, want to operate their programs safely and in compliance with regulatory requirements; however, a few have not provided lasting corrections in response to civil penalties. For utilities, NRC's Office of Inspection and Enforcement believes that the present civil penalties are too low and that a few utilities might have made higher quality and more lasting improvements in their operations if NRC had imposed much larger civil penalties.

NRC's enforcement records show that civil penalties have not been effective in several cases when used against utilities. For example, NRC has imposed two civil penalties each on five utilities, three penalties on one utility, and five penalties on another utility. For four of these seven utilities, the civil penalties were imposed for separate violations of the same general regulatory requirements.

On three other occasions, NRC considered--but decided against--civil penalty sanctions against the utility NRC has fined five times. This utility has been operating seven nuclear plants since November 1973 and is constructing or planning eight more plants at four locations. Because civil penalties have not been effective in obtaining needed improvements, NRC has been meeting monthly with the utility's management to closely monitor the utility's progress in improving its operations. One citizen group opposed to the use of nuclear power has questioned NRC's failure to suspend one or more of the utility's operating licenses following

safety-related incidents, and NRC has discussed the possibility of a future license suspension if the utility does not make satisfactory lasting improvements. After several civil penalties, the utility agreed to hire a consulting firm to assist it in upgrading the quality of its nuclear powerplant operations.

NRC's Office of Inspection and Enforcement recognizes that it needs larger civil penalty authority to use against utilities constructing and operating nuclear powerplants. Higher civil penalty authority would, it believes, encourage better utility compliance. It also believes that it would make NRC's civil penalties more realistic in view of the other agencies' authorities and the potential consequences of one or more major violations at a nuclear powerplant.

In May 1978 NRC proposed legislation which would raise the limits on its civil penalty authority from \$5,000 to \$100,000 per violation, and from \$25,000 to \$300,000 for all violations in a 30-day period.

CHAPTER 3

NRC HAS NOT EFFECTIVELY USED

ITS CIVIL PENALTY AUTHORITY

Although NRC believes it needs authority to impose larger civil penalties, it has not made full and effective use of the authority it now has. Specifically:

- When NRC finds that a licensee has violated a regulatory requirement on separate occasions, or on a continuing basis, it usually cites the licensee for only one violation. This practice reduces civil penalty amounts, and understates the number and frequency of violations found in inspections.
- NRC is not always aggressive in selecting and imposing civil penalty sanctions consistent with its desired image of a tough but fair regulator.
- NRC does not always promptly clarify regulations in dispute.
- NRC takes too much time to select and impose civil penalties. This diminishes their effectiveness.
- NRC does not notify State utility commissions when it imposes civil penalties on utilities operating nuclear powerplants.

NRC CONSOLIDATES SEPARATE AND CONTINUING VIOLATIONS

For 11 of the 22 cases we reviewed, NRC inspectors found that licensees had violated the same regulatory requirement more than once since the previous NRC inspection. In 10 of the 11 cases NRC cited the licensees for one violation, with each example listed to support the citation. The following two cases illustrate this consolidation practice.

In one case, NRC found a licensed industrial firm had not made adequate surveys 1/ of

- radiation levels in unrestricted areas of the licensee's premises,

1/An evaluation of the radiation hazards incident to the presence of radioactive materials or other radiation sources.

- radiation exposure to individuals in restricted areas,
- radioactive material discharged in liquids, and
- material disposed of as normal trash.

NRC consolidated these four separate survey violations into one and proposed a \$500 fine--the minimum amount it imposes on this type of licensee for a survey violation. Clearly in this case, however, the examples were separate and unrelated to each other and should have been treated as four survey violations with a penalty for each.

In another case, an NRC regional office proposed a civil penalty against a utility operating a nuclear powerplant because of two personnel overexposures which occurred in early 1977, an increase in the frequency of overexposures, and weaknesses in the licensee's radiation safety training program. The region recognized that the two overexposures were separable; however, it recommended a single civil penalty of \$4,000 for the two overexposures. This amount is the lowest amount in the civil penalty range NRC has established for personnel overexposures at nuclear powerplants. Had NRC decided to fine the utility for two overexposures, the minimum amount would have been \$8,000.

In 4 of the 22 cases we also found examples of NRC treating continuing violations as single rather than separate violations, for the purpose of computing civil penalty amounts. In one case, a utility did not analyze its reactor's cooling water for radioactive material content for a period of 6 months. NRC required a monthly analysis. NRC treated the licensee's failure to conduct the required analysis as one violation with a civil penalty of \$1,000 instead of six violations with a civil penalty of \$6,000.

NRC NEEDS TO BE MORE AGGRESSIVE IN SELECTING AND IMPOSING CIVIL PENALTIES

Civil penalty sanctions proposed by NRC's inspectors are reviewed by regional office management, by the Office of Inspection and Enforcement headquarters staff, and by the Office of the Executive Legal Director staff. Frequently, these reviews result in modifications, deletions, and/or additions to alleged inspection violations; reductions or increases in proposed civil penalties; or downgrading proposed civil penalties to letters notifying licensees of inspection violations issued by NRC headquarters rather than regional offices. The reviews are intended to insure that proposed civil penalties are appropriate for the particular cases,

consistent with published enforcement criteria and policies, and technically and legally defensible.

In 6 of the 22 proposed or actual civil penalty cases we reviewed, NRC could have been more aggressive in selecting and imposing civil penalty sanctions to project its desired "tough but fair" regulatory image. In two cases NRC downgraded proposed civil penalties to enforcement letters to the licensees over the objections of the regional inspection offices. In two other cases, NRC withdrew proposed violations and related civil penalties when the licensees argued for different interpretations of particular regulations; however, NRC did not promptly clarify these regulations. In two cases, NRC proposed much smaller civil penalties than its enforcement policies and procedures called for because of perceived but unsubstantiated licensee financial hardships.

Downgrading proposed civil penalties to enforcement letters

In two enforcement cases NRC's Office of Inspection and Enforcement downgraded--over the strong objections of two regional offices--proposed civil penalties to "strong" enforcement letters signed by headquarters officials. NRC intends such letters to put licensees on notice that civil penalties are likely if later inspections do not show substantive improvements.

Case A

In April 1975 an NRC regional office proposed a \$19,000 civil penalty based on 18 alleged violations of NRC's 18 quality assurance requirements for operating nuclear powerplants. The regional office believed the violations demonstrated a breakdown in the licensee's management and procedural controls for implementing its quality assurance program. Following an extensive regional office and headquarters review--during which the proposed civil penalty was increased to \$41,000 and eventually reduced to \$30,000--the NRC regional and headquarters enforcement staffs agreed that 15 of the 18 alleged violations were legally and technically supportable. The regional office then argued for a \$30,000 civil penalty based on the 15 violations. At that point in time, NRC's headquarters staff had not decided against a civil penalty, but argued for reducing the proposed amount for consistency with previously imposed penalties. It suggested doing this by consolidating each violation of any one of the 18 quality assurance criteria into a single violation of that criterion. This consolidation was a departure from normal procedure which reduced the number of inspection violations from 15 to 8.

Finally, the NRC headquarters staff decided to issue a headquarters-level enforcement letter instead of imposing a civil penalty, because in its view the violations were procedural and did not demonstrate a breakdown in the licensees' quality assurance program. The regional office disagreed because:

- NRC's enforcement manual defines a breakdown in management or procedural controls as being evidenced by violations in several areas of NRC's 18 quality assurance criteria and license requirements. In this case, NRC inspectors found 14 violations of 7 quality assurance criteria.
- It considered several violations to be significant to safety. Seven of the 15 violations were in the second of NRC's three categories of importance to safety.
- It believed that procedural matters could be important to safety. It pointed out that "paperwork" violations were the basic cause of an accidental nuclear chain reaction at another operating nuclear powerplant.

The region concluded that although the licensee was improving its quality assurance program--in part, the region believed, because the licensee was anticipating a civil penalty--it was vital to proceed with the civil penalty. Proceeding with the penalty, the region believed, would likely have beneficial effects on the licensee's quality assurance program for operating its nuclear powerplant then under construction. The region also believed that other utilities expected that NRC would impose a civil penalty. Eventually, however, the regional office concurred in the headquarters-level letter because of the lengthy time--7 months--NRC had already taken to select an enforcement sanction.

Case B

On June 3, 1975, a utility licensed to operate a nuclear powerplant allowed the reactor's primary cooling system to become overpressurized; and on June 6, 1975, the utility accidentally discharged 15,000 gallons of reactor coolant into the containment building. The latter event resulted in excessive radioactive gas in the containment building.

Following an investigation, an NRC regional office recommended a \$12,000 civil penalty for four alleged violations which caused or contributed to the two events. The alleged violations related to personnel errors and inadequate procedural controls. The region proposed a civil penalty because of the potentially significant health and

safety consequences of each event and the large number of violations and events since the licensee began operating the plant. From April 1974 to June 1975 the licensee had reported four similar events, each the result of personnel error and/or inadequate procedural controls. In the regional office's judgment, the two June 1975 events and the history of previous events and inspection violations demonstrated that licensee management at the corporate and plant levels had failed to assure adequate procedural controls. Strong enforcement action--in this case a civil penalty--was seen as needed because three previous meetings with utility management to discuss management control deficiencies had not resulted in effective management controls to correct the problems at this powerplant.

NRC's headquarters enforcement staff, however, took the position that a headquarters-level enforcement letter was more appropriate because

- NRC had cited the licensee for violations in only one of the previous four events.

- The inspection violations were not severe or numerous enough to warrant a civil penalty.

- There were technical discrepancies with the language of some of the violations as written by the regional office.

Additional discussions between the NRC region and headquarters staff raised another issue. About 2 months earlier, NRC had imposed a civil penalty on the same licensee for similar and repetitive problems at another of its nuclear powerplants. At issue was whether NRC should impose a second civil penalty before determining if the first one had produced appropriate corrective actions. The regional office continued to believe a civil penalty was warranted. It expressed its concern that potentially serious problems continued as a result of personnel errors and ineffective management controls, as demonstrated by the fact that three more events--including another cooling system overpressurization--had occurred at the powerplant in the 5-1/2 months following the inspection which led to the proposed civil penalty. Nevertheless, the regional office agreed to an enforcement letter because of the previous civil penalty.

Withdrawing civil penalties and not promptly clarifying regulations

On two occasions, NRC withdrew violations and related civil penalties when the licensees argued for different

interpretations of particular regulations. In both cases NRC's inspection and enforcement staff strongly argued for civil penalties, but NRC withdrew them because of the uncertainty of sustaining its position in hearings or in the courts. In neither case, however, did NRC promptly clarify the regulation to preclude continuing misinterpretation--the one discussed below in Case A has yet to be clarified.

Case A

On April 5, 1976, a utility employee was overexposed to radiation while inside the reactor containment building during a refueling operation. NRC investigated the incident and proposed a \$23,000 civil penalty based on nine violations. One violation listed three occasions on which the licensee failed to conspicuously post signs indicating each high radiation area within the reactor containment building, as an NRC regulation requires.

The utility challenged one of the three examples of this consolidated violation, however, because (1) it considered the entire area within the containment building to be a high radiation area and (2) signs at all entrances to the containment building were properly posted that day. The utility did not believe the regulation required it to post signs at each individual high radiation area within the posted containment building.

NRC's position was--and continues to be--that the purpose of the posting requirement is to provide workers with information needed to minimize their exposure to radiation; therefore, at each high radiation area within the reactor containment building signs should be properly posted. Following the licensee's challenge, however, NRC dropped that particular example of the posting violation and reduced the civil penalty amount for the violation by one-third.

Furthermore, NRC has not yet clarified this regulation to make clear--in both a technical and legal sense--what is required from licensees. NRC's regulations authorize its Office of the General Counsel to write binding interpretations of its regulations. That office has not done so in this case. Furthermore, while officials of the Office of Inspection and Enforcement and Executive Legal Director agree that NRC should clarify the regulation, neither of these offices, nor the Office of Nuclear Reactor Regulation, has requested the Office of the General Counsel to do so.

Case B

In August 1974 while inspecting a nuclear powerplant, NRC inspectors observed that on several occasions the operator assigned to one reactor left the reactor control console and went behind the control panel. NRC proposed a \$4,000 civil penalty against the licensee for violating the regulation which requires nuclear powerplant licensees to have an operator at the controls at all times when the reactor is operating. The licensee denied the violation, claiming that the operator behind the control console had been relieved by another operator. NRC's inspectors had observed another individual at a table 25 to 30 feet from the control console who was not attentive to the reactor controls, and thus had not been considered by the NRC inspectors to be a relief operator.

The NRC legal staff argued in favor of dropping the proposed penalty. Its position was based on language then in NRC's reactor inspection manual from which it concluded that a licensed operator need only be available within the whole of the control room rather than immediately at the control panel. NRC's inspectors did not know whether or not the individual observed at the table was a licensed operator.

NRC's inspection staff strongly urged proceeding with the civil penalty action--rather than withdrawing it on what it considered a technicality--because of the seriousness with which it viewed the event and the precedent that withdrawing it would establish. The inspection staff's position was based on the following:

- During NRC's investigation of the event the licensee acknowledged that the operator should be present at the controls at all times and developed a new operating procedure to insure that the event did not recur.
- During NRC's investigation of the event the licensee did not claim that the operator had been relieved by another operator. This claim was made only after NRC had proposed the civil penalty.
- When a warning signal sounded at the control panel, the operator behind the panel responded rather than the alleged relief operator.
- The purpose of having an operator at the controls is to provide a human backup to the automatic instrument controls. The alleged relief operator, however, was

not close enough to the control panel to read important instrumentation.

Again, NRC did not act swiftly to clarify an ambiguous regulation. It did not clarify the meaning of the regulation in question until February 1976--18 months after this event occurred.

Smaller civil penalties proposed
because of perceived financial
hardships

In two cases we reviewed, NRC's headquarters staff reduced the amount of proposed civil penalties because of perceived financial hardships on the licensees. The staff lowered the penalty amounts by consolidating separate violations (the practice described on pages 10 and 11) and revising the inspection findings, as described below for one case.

An NRC regional office proposed a \$9,000 civil penalty against a manufacturer of radioactive drugs based on 13 violations detected in August and October 1974 inspections. The licensee had a history of similar inspection violations. In the regional office's opinion, the licensee's manufacturing operation was expanding faster than its radiation safety program. NRC's headquarters enforcement staff agreed to a civil penalty, but stated that the proposed amount might be too severe for a company of that relatively small size. It also wanted to reduce the penalty amount to be consistent with amounts NRC had previously imposed on the same type and size of licensee for similar violations. By consolidating the 13 proposed violations into 5--with some of the 13 original violations listed as examples--NRC reduced the actual penalty from \$9,000 to \$3,400.

NRC SHOULD IMPOSE CIVIL PENALTIES
ON A MORE TIMELY BASIS

NRC takes about 68 calendar days to impose civil penalties on utilities constructing or operating nuclear powerplants and about 60 calendar days for other licensees. These time periods represent the elapsed time from inspections until licensees are notified of NRC's intent to impose civil penalties. NRC's goal is to impose civil penalties within 40 calendar days of inspections.

Much of the processing time is due to the multiple layers of review and changes to proposed civil penalties. Five days of the processing time, however, is due to the Director, Office of Inspection and Enforcement, policy of giving the NRC

Commissioners notice before sending notices of civil penalties to licensees. This is simply a courtesy and is not a necessary part of processing civil penalties.

Adherence to enforcement selection procedures would help NRC reduce the processing time by reducing time-consuming reviews and changes which in turn would enhance the effectiveness of the civil penalty as an enforcement tool. Following are examples illustrating this point.

In the civil penalty case discussed on page 17, the NRC regional office took 13 days to prepare a proposed civil penalty and NRC's headquarters enforcement office took another 64 days to rewrite the civil penalty to reduce the dollar amount. While NRC was doing this, the licensee reported two additional employee overexposures.

In the case discussed on pages 12 and 13, NRC's regional and headquarters enforcement staffs could not agree on the significance of the inspection violations. Although the regional office maintained that the violations were significant and warranted a civil penalty, it eventually agreed to a letter notifying the licensee of the violations because of the lengthy time taken up by the dispute. NRC issued the letter 7 months after the inspection.

NRC'S FAILURE TO NOTIFY UTILITY COMMISSIONS WHEN UTILITIES ARE PENALIZED

Until January 1978 NRC did not know if utilities were able to pass the cost of NRC civil penalties on to their customers. At that time, however, NRC informally surveyed State utility commissions on this subject. Most State commissions responded that while State laws do not specifically prohibit utilities from passing on civil penalties, the commissions would probably disallow them in ratemaking proceedings.

A few responses, however, indicated that civil penalties could be passed on to customers. We discussed policies for handling utility penalties with the utility commissions of the States of Illinois, Maryland, North Carolina, and Virginia. All stated that they do not allow penalty costs to be passed on to utility customers. Periodic audits are used to assure that penalties are not passed on. One commission admitted, however, that it had inadvertently allowed a utility to pass on an NRC civil penalty and did not discover this until NRC's informal survey. It then notified the utility that the penalty would be disallowed and set up procedures to insure that any future penalties would not be passed on.

When NRC imposes a civil penalty on a utility it also issues a press release and informs a designated State liaison official by telephone. It does not, however, send a copy of the civil penalty to the appropriate State utility commission. This additional step would insure that these commissions are aware of NRC civil penalties.

CHAPTER 4

CONCLUSIONS, OBSERVATIONS, AND RECOMMENDATIONS

NRC wants to project the image of a tough but fair regulator of nuclear power and other nuclear-related activities. In our view, such an image is desirable to promote safety in the many activities NRC is charged with regulating in the public interest. Rightfully achieved, this image may also be important in building public confidence that nuclear materials can be safely used in activities as complex as nuclear powerplants and as simple as gauges containing minute quantities of radioactive materials.

In our opinion, the present limits on NRC's authority to impose civil penalties are too low for effective use on licensees with large and potentially hazardous nuclear operations which provide important services not readily available elsewhere. NRC civil penalties do not provide these licensees economic incentives to improve the safety of their operations, nor do they promote NRC's desired image of a tough but fair regulator. Yet, these are the same types of licensees for which AEC originally sought civil penalty authority.

NRC recognizes that its civil penalty authority is too low and recently requested that the Congress raise it to a maximum of \$100,000 for a single violation and \$300,000 for all violations in a 30-day period. On the other hand, our review of 22 proposed and actual civil penalty cases leads us to conclude that NRC has not fully and effectively used the civil penalty authority it now has. NRC

- consolidates separate licensee violations of the same requirement into one violation, thereby lowering the civil penalty amount and understating the number of inspection violations;
- does not aggressively select and impose civil penalty sanctions consistent with its desired image as a tough but fair regulator;
- does not always promptly clarify regulations in dispute;
- takes too much time to select and impose civil penalties; and
- does not notify State utility commissions in writing when it imposes civil penalties on utilities.

Thus the question: Does NRC need authority to impose larger civil penalties, or does it only need to fully and

effectively use its existing authority? We believe it needs both. It needs authority to impose larger penalties to provide some licensees with economic incentives to improve the safety of their operations. Even if it fully uses its existing authority, the civil penalties NRC can impose on major licensees--such as utilities operating nuclear powerplants--will usually be \$25,000 or less. A utility operating a nuclear powerplant today spends about \$1 billion to construct it, millions annually to operate it, and on the order of \$300,000 a day to purchase power from other sources when it is shut down. Thus a \$25,000 or less civil penalty is of little economic consequence to a utility. While adverse publicity may be an incentive for a utility to improve safety, publicity value cannot be measured like the economic value of a larger civil penalty. The larger civil penalty would also be desirable because, in the absence of an immediate threat to public safety, suspending a utility's operating license probably would not be appropriate in many cases because of the adverse impact on the utility's customers.

NRC should also fully and effectively use its present civil penalty authority. It should treat separate licensee violations of the same requirement and continuing violations of a requirement as separate violations instead of consolidating them. This would enable NRC to impose larger civil penalties. More important, it would accurately reflect inspection findings instead of understating them as NRC's consolidation practice does. In addition, NRC should be more aggressive in selecting and imposing civil penalties to better project to all licensees its desired image of a tough but fair regulator. For example, NRC should not reduce a civil penalty below the amount called for in its policies and procedures--before announcing it to a licensee--based on perceived financial hardship. Any such reductions should be made only after NRC proposes a civil penalty and the licensee then presents both evidence of financial hardship and specific steps to improve safety. NRC should also establish procedures to insure that appropriate staff offices are assigned and held accountable for clarifying regulatory requirements when NRC finds licensees misinterpreting them. For maximum impact and effectiveness, NRC should impose civil penalties faster. For example, NRC could save 5 days by eliminating the present advance notice to the Commissioners. Finally, for utilities operating nuclear powerplants, NRC should notify appropriate State commissions in writing when it imposes civil penalties to be sure the commissions are aware of them.

While we support NRC's request for authority to impose larger civil penalties, we do not agree with its proposal

to limit a penalty to \$300,000 for all violations in a 30-day period. Experience to date indicates that the 30-day maximum penalty is unnecessary and may continue to hinder the objective of providing licensees with potentially hazardous programs and large financial resources economic incentives to improve safety. Any combination of continuing and/or separate violations which would, under NRC's enforcement policies, warrant a civil penalty larger than \$300,000 should be proposed at that amount--subject to reduction if a licensee can demonstrate financial hardship and positive steps to improve safety.

Authority to impose larger civil penalties on the order NRC has requested would represent a major change in NRC's enforcement program--an increase of 20 times in the maximum penalty for a violation. This major change, plus the need for NRC to revise its present enforcement policies and procedures, leads us to conclude that NRC should incorporate the details of its enforcement program in its regulations. At present, the regulations merely provide a general description of the enforcement process, while the details are contained in NRC's enforcement manual which is not subject to the rule-making process. Thus, the manual was developed without benefit of the views of affected external parties.

Rulemaking, on the other hand, provides for obtaining participation by interested parties in developing a regulation. Rulemaking is appropriate for at least four reasons. First, it would provide a forum in which NRC could articulate its enforcement program to licensees and the public, particularly its plans for using authority to impose larger penalties. Second, it would give licensees and the public an opportunity to present their views on all aspects of NRC's enforcement program. Third, it would help NRC more consistently select enforcement sanctions that are appropriate to the licensee violations and their significance to public safety--it would provide a point of reference by which NRC management, licensees, and the public could measure NRC's performance. Fourth, it would promote licensees' understanding of and the public's confidence in NRC's enforcement activities. Such a proceeding should at a minimum address:

- plans for using authority to impose larger civil penalties, including a schedule establishing ranges of civil penalty amounts for violations depending on both their importance to safety and the economic incentive necessary to insure that different types of licensees take corrective actions;

- criteria for selecting enforcement sanctions, including the importance of violations to safety and

the weight given the chronic or repetitive violations;

- procedures for selecting enforcement sanctions and computing penalty amounts;
- factors to consider in licensees' requests for mitigation or remission of civil penalties, such as financial hardships and conditions licensees must meet;
- written notices of imposition of civil penalties to other governmental agencies such as commissions which set rates for utilities' electrical power; and
- how NRC will determine a continuing violation for the purpose of computing a civil penalty amount, and whether or not several separate occurrences of the same violation constitute several or one violation.

We believe NRC should consolidate into a single policy statement its criteria, policies, and procedures for selecting enforcement actions. Such a statement should include actions NRC intends to take to correct the weaknesses in its enforcement program discussed in this report. If the Congress decides not to grant NRC authority to impose larger civil penalties, NRC should proceed with a rulemaking on its enforcement program, using the policy statement as a basis for developing its enforcement regulations.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress increase from \$5,000 to \$100,000 the civil penalty amount NRC can impose for a single violation, and eliminate the present \$25,000 limit for all violations in a 30-day period. Specifically, we recommend that the Congress amend section 234(a) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), as follows:

"a. Any person who (1) violates any licensing provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, or 2139 of this title or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked under section 2236, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing

the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties."

RECOMMENDATIONS TO THE CHAIRMAN, NRC

To aid NRC in aggressively selecting and imposing civil penalties and projecting its desired image, we recommend that the Chairman, NRC

- treat each occurrence of a violation of the same requirement as a separate violation of that requirement;
- treat each occurrence of a continuing violation as a separate violation for the purpose of computing a civil penalty;
- establish procedures to insure that NRC promptly clarifies regulatory requirements which are being misinterpreted by licensees;
- notify appropriate State utility commissions when NRC imposes civil penalties on utilities operating nuclear powerplants;
- assign a higher priority to processing proposed civil penalties, including eliminating the present 5-day advance notice to Commissioners; and
- establish these enforcement criteria, policies, and procedures by rulemaking.

AGENCY COMMENTS AND OUR EVALUATION

In a January 3, 1979, letter commenting on our report (see app. I), NRC agreed that our findings warrant its examination. NRC agreed that it needs to process civil penalty cases and clarify ambiguous regulations faster. It also said it is (1) developing better guidance on proper handling of separate violations of the same regulations and (2) reviewing the subject of notifying utility commissions when NRC imposes civil penalties on utilities.

NRC did not agree, however, with our general conclusion in chapter 3 that NRC has not effectively used its civil penalty authority, and our specific conclusion that NRC has not aggressively selected and imposed civil penalty sanctions. NRC officials pointed out that the examples discussed in our report are old, all but one of them occurring from late 1974 through the first part of 1977, and do not reflect accurately

the present enforcement program. For this reason, we also reviewed the 12 civil penalties NRC has imposed from January through November of 1978. We found instances of consolidating violations, untimely processing, and other evidence of unaggressive use of civil penalty authority in 6 of 12 cases.

NRC also pointed out that it vigorously defended civil penalties it had imposed on three licensees but withheld the proposed penalties in two cases because its positions were not legally supportable. In the latter two cases, however, the reasons for the dispute--and for NRC's decision to withdraw the violations and related civil penalties--were ambiguous regulations which NRC did not promptly clarify. In fact, one ambiguous regulation that led to a dispute in 1976 has still not been clarified.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 3, 1979

Mr. J. Dexter Peach
Director
Energy and Materials Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity to comment on the draft GAO report entitled, "The Nuclear Regulatory Commission's Use of Civil Penalties... Higher Amounts and More Effective Use Needed." These comments refer to the revised draft received by my staff on December 5, 1978.

The balance between tough and fair, the enforcement principle NRC wishes to implement, requires constant vigilance to maintain. We consider GAO audits to be a valuable input to assist us in maintaining a proper balance. The timing of this GAO audit is especially helpful in view of the changes which the NRC has proposed and has in progress in its policies, procedures and legislation relating to enforcement as a result of internal review and studies performed by NRC contractors. We are pleased that GAO findings reinforce NRC's recommendation to Congress regarding the need for increased civil penalty authority. We acknowledge the desirability for improving the timeliness of civil penalty actions and clarification of ambiguous regulations.

We believe that it is important to emphasize that your report concerns NRC use of the civil penalty--only one of several enforcement sanctions available to NRC. The report does not cover the very large majority of enforcement actions which are effectively carried out by NRC and which promptly achieve the desired corrective action on the part of NRC licensees. We believe the overall enforcement program is based on a sound philosophical approach and--with rare exception--has been highly successful in rationally and effectively achieving corrective action on the part of NRC licensees.

Your report expresses your views--and makes recommendations--on certain aspects of the NRC use of civil penalties. We agree that these aspects deserve examination by NRC. However, we do not agree with your conclusion as stated in the title of Chapter 3 that "NRC Has Not Effectively Used Its Civil Penalty Authority." Your conclusion apparently is based on four GAO findings. Our comments on these findings are:

GAO note: Page numbers in this appendix refer to the draft report and do not necessarily correspond to this final report.

1. "NRC Consolidates Separate and Continuing Violations" - As was made known to you in the audit, the treatment of "violations" versus "examples of violations" is a matter of some disagreement on part of the NRC staff. Generally, as a matter of practice, we have considered instances of failure to follow the details of procedures which the licensee has developed to achieve compliance with a requirement as examples of failure to meet the requirement rather than each failure to follow the procedure details as a separate and distinct violation of the requirement. NRC believes it is unnecessary to cite the licensee for each and every example of a violation of a regulation to achieve the desired level of compliance. Instead, NRC chooses to cite the requirement to focus the licensee's attention on our health and safety concerns. Moreover, we believe it is more important from the view of public health and safety to use the limited time of inspection to determine whether an item of noncompliance is an isolated event rather than exhaustively searching for similar violations of the same requirement. While we believe we have been generally consistent in this area, we are developing improved guidance in the interest of uniformity.

As your audit identifies, the dollar value of the civil penalty for major licensees does not provide, in itself, a high incentive to avoid a civil penalty. Consequently, the NRC use of civil penalties for major licensees has developed with the belief that the total dollar value is not the prime consideration. Rather, the more important consideration is the act of imposing the civil penalty (an act sufficiently infrequent to be meaningful when used).

Civil penalties have been reserved so that when used they provide a meaningful "signal" to licensees that the Commission has serious concerns about their activities. Therefore, we believe NRC use of the civil penalty has increased the effectiveness of this sanction rather than impaired its effectiveness, which could occur if NRC's limited civil penalty authority were not judiciously used.

2. "NRC Needs to be More Aggressive in Selecting and Defending Civil Penalties" - We disagree that this finding is supported by the facts. The vigorous manner with which the NRC has defended three recent cases in which the licensees requested a hearing subsequent to NRC imposition of civil penalties clearly challenges your finding and conclusion. No mention was made by GAO of these hearings although NRC defense of these cases occurred during the time interval GAO reviewed, and one of the violations from one of the cases was used as an example of consolidation of separate violations (p. 17).

We do not believe that the two instances (p. 18) of Headquarters rejection - on legal grounds - of inspector recommendations constitute a demonstration that NRC "does not defend its position when licensees challenge Commission interpretations." (emphasis added) These interpretations were given to the licensee for the first time after the purported violations occurred and when presented to the NRC lawyers--also for the first time--the interpretations were found to be legally unsupportable.

Moreover, when the licensee presents information in response to a civil penalty that clearly erodes the legal basis for the penalty, the NRC will not continue to support the civil penalty action. To embark on defense of a position which is not legally supportable would not only be unfair and tend to cause a loss of respect for the NRC but would waste valuable NRC resources.

The necessity of having legally supportable citations was driven home to this agency some time ago by the Department of Justice in the context of the X-Ray Engineering Co. civil penalty case. In that case the Department refused to go to trial despite NRC's urging because it regarded the NRC's interpretation of its regulations questionable.

We believe that the fairness demonstrated by NRC's consideration of new information presented by licensees enhances the effectiveness of the NRC use of the civil penalty. Even if a requirement may be unclear, NRC does assure that timely corrective action is taken where a safety problem exists.

We also wish to point out in your report that Case A on p. 23 appears to be incorrectly identified as an instance in which NRC withdrew civil penalties. Actually, only a portion of one violation in Case A was successfully challenged by the licensee. This resulted in a reduction in the penalty assigned to that item not "withdrawing the civil penalties" as stated on p. 23.

3. "NRC Should Impose Civil Penalties On A More Timely Basis" - We agree with the basic finding to the extent that a reduction in the time would cause civil penalties to be more effective. We do not agree that the difference between the average time of 68 days for power reactors and the current NRC goal of 40 days has made the civil penalties ineffective.
4. "NRC's Failure to Notify Utility Commissions When Utilities are Penalized" - The statement that NRC does not specifically notify state utility commissions is correct. However, the state representative who serves as the official state contact with the NRC is notified and a press release is made of the proposed civil penalty.

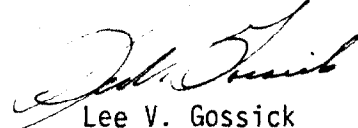
We disagree that failure to specifically notify state utility commissions has reduced the effectiveness of any civil penalties issued to date since the dollar value of the penalties has not been large. However, notification of utility commissions is under NRC review.

We believe your report conveys the impression on p. 12 that the NRC is remiss in the regulation of power reactors by the unqualified statement that "...NRC has never suspended a nuclear power plant operating license because of violations detected in an inspection or investigation." The statement is technically correct; however, the NRC has suspended operating licenses at the Humbolt Bay and Indian Point 1 power reactors as a result of safety concerns related to facility design. Similarly, the Midland facility was issued a Show Cause Order as a result of construction quality problems and the Callaway facility was issued a Show Cause Order based upon denial by the licensee of access by the NRC to inspect the circumstances of the firing of an employee who had alleged safety concerns.

There are many instances of operations which have been interrupted or delayed through NRC actions when health and safety concerns have been identified. A specific instance of such an action occurred when an IE Bulletin was issued to all utilities operating General Electric Boiling Water Reactors. The Bulletin required reactor shutdowns within 60 days in order to inspect specific piping for indications of cracking. The NRC has not suspended any nuclear power plant operating licenses because of violations detected in an inspection or investigation because such action has not been necessary to assure public safety. If such an action were necessary, it would be taken.

Finally, we believe it is important to restate that the basic purpose of enforcement is to achieve compliance with NRC regulations. Civil penalties are an incentive to continued compliance which signal the licensee that NRC concerns have been elevated significantly. In general, it is our view that licensees have responded well to these concerns.

Sincerely,



Lee V. Gossick
Executive Director
for Operations

(30143)

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